



EAST RIVER

ELECTRIC POWER COOPERATIVE

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

East River Electric Power Cooperative
Comments on
FCC NOPR WT Docket 95-157

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20541

Before the
Federal Communications Commission
Washington, DC 20554

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SUBJECT: Comments on the WT Docket No. 95-157 RM-8643

FROM: East River Electric Power Cooperative, Inc.

TO: The FCC Commission

East River Electric Power Cooperative is a wholesale generating and transmission cooperative servicing 24 rural electric distribution cooperatives and one municipal electric system in Eastern South Dakota and Western Minnesota. East River Electric owns and operates 2550 miles of high voltage transmission lines and 200 substations to deliver the electric supply to its 25 member systems. Our service area is approximately 36,000 square miles and we serve about 70,000 consumer accounts, giving East River Electric and its members a density of less than two consumers per mile of line.

East River Electric relies heavily on its 2 GHz communication system in operating its utility. This frequency is used as part of the supervisory control and data acquisition system for East River Electric, communicating in times of natural disaster, and solving problems before they result in a major disruption of electric service.

With that brief introduction, East River Electric would offer the following comments on the Notice of Proposed Rulemaking FCC 95-426 adopted October 12, 1995 and released October 13, 1995.

The NPR outlines the very extensive comment period during the development of the existing relocation procedures for microwave incumbents which were adopted in the Emerging Technologies Docket 92-9. Through those deliberations East River Electric strongly opposed efforts to arbitrarily require electric cooperatives and other utilities to relinquish assigned frequencies in the 1850 - 220 MHz band, unless equally reliable communications paths could be made available at no cost to the incumbents. As the FCC agreed with our concurrences in the 92-9 Docket and proceedings, East River has supported those procedures. As a result, East River supports the development of a cost-sharing plan in order to avoid potential

East River offers the following specific comments:

Paragraph 24 - Adoption of a suitable cost-sharing plan will encourage relocation of entire microwave systems rather than individual links, resulting in a more efficient and reliable overall system at a lower ultimate cost.

Paragraph 37 - The list of reimbursable costs as proposed by the Commission appears reasonable, but should be illustrative but not be limited. Certain appropriate legal costs, within a specified limit, incurred in negotiating with the PCS licensee should also be eligible for reimbursement.

Paragraph 43 - We agree that a \$250,000 per link cap, plus \$150,000 for towers is reasonable and adequate at 1995 prices. However, an escalation factor based on the Consumer Price Index should also be adopted.

Paragraph 74 - The FCC proposal that recurring costs be limited to a single ten-year license term is reasonable. However, in order to reduce the administrative burden on the PCS licensees it may be advisable to make reimbursement for recurring costs based on a present value basis using a set interest costs such as 9 percent per year.

Paragraph 77 - There should be no accounting for the incidental benefit of improved technologies in more modern products. The FCC has determined that incumbent users of 2 GHz spectrum must abandon existing serviceable and functionally adequate equipment and systems and purchase replacement equipment at a time of great market pressure and without regard for corporate financial budgets. Therefore, depreciation schedules should not be applied to the cost of the new equipment and systems.

Paragraph 86-89 - We believe that the commission should maintain the existing rules governing primary and secondary status for modification and minor extensions in the new rules. We note that the new rules eliminate the minor extension provisions contained in the 92-9 Emergency Technology Docket. Further restricting primary status to reasonable improvements in existing systems could result in a system that is dysfunctional due to interference on a minor extension that could jeopardize the ability of East River Electric to retrieve vital system operation data. We strongly urge that at least minor extensions be granted primary status.

Paragraph 90 - The FCC proposes that licenses of microwave incumbents that are still operating in the 1850-1990 MHz band on April 4, 2005, should be made secondary on that date. This proposal is of major concern to rural electric utilities who may not feel the impact of emerging technologies for decades. The FCC proposal appears to be predicated on the assumption that there are emerging technology providers ready to operate in every part of the nation. In reality, many sparsely populated regions will not support the economic development of PCS now or in the foreseeable future. Moreover, it is these areas that depend the most on the reliable communications paths provided by long-distance fixed microwave paths in the 2 GHz band. If the rules are not changed, a new PCS licensee in these regions would be permitted to negotiate with incumbent microwave users potentially affected by its

PCS system during the first three years of each PCS license. After three years, the PCS licensee could negotiate or invoke involuntary relocation procedures. This provision of the current rules would ensure that all incumbent microwave users, whether they are rural or urban, have a reasonable period of time to discuss voluntary relocation before being subjected to an involuntary relocation program. This period of time will act as an incentive for new technology proponents to treat incumbents fairly.

The length of the "transition period", if any, to be adopted by the FCC was a major consideration in FCC Docket No. 92-9. Although the FCC labeled this a "transition period", the period is one of voluntary negotiations. The use of the term "transition" connotes that a definite anticipated conclusion will be reached, i.e. cleared spectrum used exclusively by emerging technologies. However, in actuality, the end result may be perpetual successful coexistence among incumbent and emerging technology users because of state-of-the-art advances such as "spread spectrum." This outcome, however, depends on an open-ended process and not on an arbitrarily selected end date like April 4, 2005, when the rights of the incumbent users would automatically evaporate.

East River still believes that the voluntary negotiation period should allow for the introduction of new services and provide for the relocation of the incumbents without undue disruption of electric utility services. This approach provides that there should be a period for marketplace negotiations before any involuntary relocation procedures would be invoked. The goal is to let the marketplace resolve these issues, but to have any involuntary relocation program in place as a safety net to deal with any incumbents who do not negotiate in good faith.

We appreciate the opportunity to make these comments and commend the FCC for your sensitivity to incumbent users of the 2 GHz band. We are not opposed to personal communication systems, such as pocket-sized phones. Obviously, many people in our society find they have a very useful role in our society, but they are not essential to our economy or to the well-being of the American people, in the same way that electricity is. We strongly believe that it is unwise to require electric utilities to relocate from the highly reliable 2 GHz band in order to provide this spectrum to the emerging technology industry. A society that compromises a basic service, like reliable electricity, is making a fundamental mistake. The FCC has demonstrated that it agrees with the philosophy and we hope it will continue its effort to assure that this mistake is not made.

Respectfully submitted,



Jeffrey L. Nelson
General Manager

JLN:pmi